

**IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ZT IP, LLC,

Plaintiff,

v.

VMWARE, INC.,

Defendant.

Case No. 3:22-cv-970-X

JURY TRIAL DEMANDED

**DECLARATION OF DIEK VAN NORT
IN SUPPORT OF VMWARE, INC.'S MOTIONS FOR
RULE 11 SANCTIONS AND ATTORNEY'S FEES UNDER 35 U.S.C. § 285**

I, Diek Van Nort, am a partner with Morrison & Foerster LLP, counsel for VMware, Inc. ("VMware"). I make this declaration in support of VMware's Motion for Rule 11 Sanctions and in support of VMware's Exceptional Case and Fees Motion.

1. Attached as Exhibit 1 is a true and correct copy of Judge Gilstrap's order awarding attorneys' fees in *WPEM, LLC v. SOTI Inc.*, No. 218-CV-00156-JRG, 2020 WL 555545 (E.D. Tex. Feb. 4, 2020).

2. Attached as Exhibit 2 is a true and correct copy of the Federal Circuit's opinion (837 F. App'x 773 (Fed Cir. 2020)) confirming Judge Gilstrap's attorneys' fees award in *WPEM*.

3. Attached as Exhibit 3 is a Certificate of Formation Limited Liability Company for ZT IP, LLC obtained from the Office of the Secretary of State of Texas showing that it was filed February 28, 2022.

4. Attached as Exhibit 4 is a true and correct copy of the proof of service for a motion on ZT IP, LLC's counsel that is substantially identical to VMware's Motion for Rule 11 Sanctions, dated June 21, 2022.

5. In-house counsel for VMware sent ZT's counsel an email (ECF No. 13-4) on June 9, 2022 summarizing the evidence presented during a June 1, 2022 Zoom call. Counsel for VMware also sent ZT's counsel a letter (ECF No. 13-2) on June 13, 2022 explaining again the deficiencies in its case. On June 21, 2022, VMware served a copy of a Rule 11 motion on counsel for ZT (see Exhibit 4). On July 8, 2022, VMware filed a motion to dismiss (see ECF No. 13) ZT's complaint. Neither ZT nor its counsel responded to any of these communications.

6. Attached as Exhibit 5 is a true and correct copy of an email chain that VMware's counsel sent to ZT's counsel requesting a meet and confer regarding VMware's Rule 11 motion. VMware's meet and confer request email is dated July 13, 2022. ZT did not respond to this email. VMware sent a follow-up request on July 15, 2022.

7. The parties held a meet and confer on July 18, 2022 at 10AM CT. Attorneys for VMware (including Richard Hung, Steven Callahan, and Diek Van Nort) met and conferred with attorneys for ZT (including William Ramey) to discuss VMware's Rule 11 motion seeking sanctions and fees. Agreement was not reached.

8. During the meet and confer, Mr. Ramey started by stating that ZT was continuing to review VMware's position and that it had been less than two months since ZT filed the complaint. Mr. Hung explained VMware's position (previously presented as part of VMware's in-house counsel presentation, in VMware's served Rule 11 motion, and in VMware's filed motion to dismiss) regarding the meritless nature of ZT's complaint and how the complaint ran afoul of Rule 11. Mr. Hung also reminded ZT's counsel of the prior *WPEM* decision, which

closely mirrored the facts present in this case. Mr. Hung also explained that, at a minimum, ZT needed to dismiss its Complaint immediately. In response, Mr. Ramey launched an expletive-filled rant that Mr. Hung was threatening him and that he did not respond well to threats.

9. At the end of the meet and confer, VMware stated it would file its motion. ZT indicated that it was continuing to consider VMware's position. After the call, ZT filed a notice of dismissal with prejudice. While VMware does not oppose a dismissal with prejudice, VMware does not agree that each party should bare its own fees and costs as stated in ZT's dismissal.

10. Attached as Exhibits 6 and 7 are true and correct copies of June 2022 and July 2022 invoices, respectively from Morrison & Foerster LLP to VMware showing approximately \$95,934 in attorneys' fees and costs.

11. Attached as Exhibit 8 is a true and correct copy of a VMware press release titled "VMware Announces ESX Server 1.5 for Enterprise Server Consolidation" dated May 13, 2002 and available at <https://news.vmware.com/releases/esx15>.

12. Attached as Exhibit 9 is a true and correct copy of a VMware white paper titled "The Architecture of VMware ESXi," available at https://www.vmware.com/content/dam/digitalmarketing/vmware/en/pdf/techpaper/ESXi_architecture.pdf.

13. Attached as Exhibit 10 is a true and correct copy of a VMware press release announcing the availability of vSphere 4.1 with ESX 4.1 in July 2010, available at <https://news.vmware.com/releases/vsphere-4-1-smb>.

14. Attached as Exhibit 11 is a true and correct copy of a VMware Knowledge Base article explaining the ESX 4.X was no longer available as of August 15, 2013, available at <https://kb.vmware.com/s/article/2039567>.

15. Attached as Exhibit 12 is a true and correct copy of a posting on ZT's counsel's webpage, available at <https://www.rameyfirm.com/ramey--schwaller-poised-to-be-a-top-5-patentee-law-firm-in-2021>.

16. Attached as Exhibit 13 is a true and correct copy of the biography webpage of ZT's counsel who signed the complaint, available at <https://www.rameyfirm.com/william-p-ramey-iii-2t>.

17. Attached as Exhibit 14 is a true and correct copy of a listing of patent cases filed in Texas district courts by ZT's counsel from January 1, 2021 until July 31, 2022 generated from Docket Navigator.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 1, 2022

/s/ Diek Van Nort

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